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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

*John Carter
T-2-1*

FILE: D-190850

DATE: February 15, 1978

MATTER OF: Pan American Products Corporation

DIGEST:

GAO declines to consider protest of procurement made on behalf of foreign government under section 22 of Arms Export Control Act because procurement was not accomplished with appropriated funds.

Pan American Products Corporation has protested against the award of a contract to another bidder under solicitation No. DACA87-78-R-0003 issued by the United States Army Corps of Engineers.

The solicitation in question was issued for the purchase of a number of self-contained living units incorporating living, mess, and supporting complexes. By a report received in this Office on January 10, 1978, the Corps of Engineers advised us that the purchase was made on behalf of the Government of Saudi Arabia pursuant to section 22 of the Arms Export Control Act, as amended, 22 U.S.C. § 2751, et seq., and that the Government of Saudi Arabia had provided sufficient funds in advance to accomplish the procurement.

We have held that since our bid protest jurisdiction is based on our settlement authority over appropriated funds, we will decline to consider protests against procurements made under section 22 of the Arms Export Control Act (formerly the Foreign Military Sales Act) inasmuch as such procurements involve the use of nonappropriated funds. Tele-Dynamics, Division of AMBAC Industries, 55 Comp. Gen. 674 (1976), 76-1 CPD 60. We have also expressed the view that the use of appropriated funds in connection with the initial processing and administration of such contracts under the provisions of Public Law No. 94-329, 90 Stat. 729 (June 30, 1976), with reimbursement by the countries accepting offers under section 22 of the act as required

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under Public Law 94-329, supra, does not change the nature of the transaction so as to bring it within the authority of this Office. Keco Industries, Inc., B-184911, B-185174, June 1, 1976, 76-1 CPD 352; International Exports Packers, Inc., B-189311, September 23, 1977, 77-2 CPD 220.

For the foregoing reasons, we decline to consider this protest.

This decision exemplifies our present position on this subject. However, we are presently reconsidering our position as the result of our concern over the significant amounts involved and, in some cases, the use of appropriated funds for the short and long term financing of sales and credit sales.

Milton J. Debling
for Paul G. Debling
General Counsel